Supreme Court, U.S.
FILED
JUN 9 1993
OFFICE OF THE CLERK

No. 92-1797

In The

Supreme Court of the United States

October Term, 1992

JAMES H. NADEAU,

Petitioner,

v.

C. MICHAEL BUDLONG AND
STATE OF CONNECTICUT,

Respondents.

**On Petition For A Writ Of Certiorari
To The Supreme Court Of the State Of Connecticut**

BRIEF OF THE RESPONDENT, C. MICHAEL BUDLONG, IN OPPOSITION

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STATEMENT OF THE CASE

Respondent brought an action against Petitioner in the Connecticut Superior Court for libel. After a three day trial, the jury found for the Respondent and awarded him $10,000 as damages.

On the first day of trial, the Petitioner appeared with a nonlawyer assistant and requested that she be permitted to assist him. The court, after stating that the Petitioner did not hear well, allowed Petitioner the privilege of an assistant at counsel table contingent upon her adherence to strict guidelines: she was to take notes and, if necessary, repeat what was said. There was no motion before the court; there was no evidence presented nor testimony elicited in support of Petitioner's claim that he had difficulty hearing. The court was merely responding to a request made by Petitioner which it granted with specified restrictions.

During the first day of trial, the court admonished the assistant not to advise Petitioner to "put that in question form," (Appendix, 4a), with the further caveat that she would be removed from counsel table if the court perceived it occurring again. Despite this admonition, the assistant continued to advise Petitioner. On the afternoon of the second day of trial, the court ordered her to remove herself stating she was not a lawyer and she could not advise a litigant in this court. The court denied Petitioner's request for an alternate as the court found he had abused the privilege of being allowed one.

During the remaining afternoon and next morning when the trial was completed, both the trial judge and Respondent's counsel continued to inquire of Petitioner

as to whether he could hear. (Appendix, 8a.) At no time did the Petitioner indicate he could not hear the proceedings.

The Petitioner appealed to the Connecticut Appellate Court claiming, *inter alia*, that he was denied a fair trial because of the removal of his assistant.

The Appellate court properly found that the trial court, using its broad discretion in the conduct of proceedings before it, did not abuse this discretion and upheld the trial court decision. The Petitioner then petitioned the Supreme Court of the State of Connecticut for certiorari which was denied on February 24, 1993.

ARGUMENT

1. Petitioner's Statement of the Case Contains Misstatements of Fact.

There was never a finding by the trial court that Petitioner was hard of hearing. The trial judge merely acknowledged that the Petitioner did not hear well. (Appendix, 1a – 2a) There was no finding that Petitioner required a hearing assistant. The trial judge inquired as to the purpose of the assistant and Petitioner confirmed that it was to assist in hearing and taking notes of the proceedings. (Appendix, 2a.)

The trial judge, in conformity with the courts long-standing practice of granting leeway to pro se litigants, allowed an assistant to sit with the Petitioner during the trial subject to her compliance with strict guidelines. Petitioner could talk to her in a whisper if he couldn't read

part of her notes or if he wanted to ask a question about what was said, but no one, other than the pro se litigant, who is not a lawyer or a witness could talk in the courtroom. (Appendix, 3a.)

The Petitioner claim in his brief that he was without his assistant for the second half of the trial. In fact, the assistant was not removed until the afternoon of the second day of the three-day trial, where evidence concluded after two hours of testimony on the third day. Subsequent to the removal of his assistant, the record does not reflect that the Petitioner complained to the court about not hearing the proceedings. On inquiry from the court and counsel as to his ability to hear the proceedings, the Petitioner consistently answered in the affirmative. (Appendix, 8a.)

2. The Connecticut Court, Acting Within Its Authority and Exercising Its Discretion Prohibited The Unauthorized Practice Of Law In Its Presence Without Offending Due Process Or Depriving Petitioner Of His Constitutionally Protected Rights.

The essence of due process is fundamental fairness. "Due process is the element that, when absent, produces a reaction given to that which is shocking to the universal sense of justice." *United States v. Russell*, 411 U.S. 423, 432, 93 S. Ct. 1637, 36 L.Ed.2d 366 (1973).

It is unlikely on this record that the Court could reach the constitutional issues. Other than a general reference to several sections of the United States Constitution,

the Petitioner makes no specific reference as to how the Connecticut courts have violated his rights.

Additionally, the Petitioner fails to clearly set forth any substantial federal question he claims was erroneously decided by the Connecticut Court, nor does he cite any applicable decisions of this Court with which any such federal question conflicts.

The Petitioner has failed to establish himself as a member of a protected class. Even if he had, in order to establish a deprivation of an interest protected by the due process clause, he must show that he was excluded from protections afforded that class. *Gallagher v. Pontiac School District*, 807 F.2d 75 (6th Cir., 1986) This the Petitioner has failed to do.

His due process claim must fail under *Hudson v. Palmer*, 468 U.S. 517, 104 S.Ct. 3194, 82 L.Ed.2d 393 (1984) because there is no allegation or showing that the state's judicial process does not provide fair procedures which would remedy the wrong alleged, if proved.

In order to make out an equal protection claim for denial of access to courts, the Petitioner must allege discrimination based on poverty, race or some other reasonable classification. See, e.g. *Griffin v. Illinois*, 351 U.S. 12, 76 S.Ct. 585, 100 L.Ed. 891 (1956) Petitioner's equal protection argument must fail because the Petitioner has not established that he belongs to the group he alleged the wrong to be directed against. *Joyce v. Mavromatis*, 783 F.2d 56 (6th Cir. 1986)

While at first blush the issue the Petitioner presents appears of national importance, on closer examination, it

is evident that the Petitioner clouds the real issue: Whether a state court should be able to exercise its discretion to prevent the unlicensed practice of law under the guise of hearing assistance.

Furthermore, the facts of this case are peculiarly its own, not likely to recur, and too narrow to warrant review by this Court on certiorari. Most courts would not give a pro se litigant the degree of latitude the Connecticut trial court did. The Petitioner was unrepresented because he tried to retain counsel by advertising (HONEST LAWYER WANTED TO SUE C. MICHAEL BUDLONG AND IS FOR UNETHICAL LAW PRACTICE) and was unsuccessful. Petition for Writ of Certiorari, 3A

The Petition fails to acknowledge that the conditions of the privilege granted him by the court during the trial contained an obligation with which he did not comply. The assistant was not to engage in the unauthorized practice of law. Implicit in the grant of this privilege was the understanding that violation of the conditions would be an abuse of this privilege and result in its revocation. The Appellate Court properly found that the trial court has wide discretion over matters which occur during the trial. This broad discretion will not be interfered with unless it has been clearly abused to the manifest injury of the litigant. *Pisel v. Stamford Hospital*, 180 Conn. 314, 322, 430 A.2d 1 (1980). Petition For Writ of Certiorari, 7A

The courts' authority can be and has been said to mean the "[r]ight to exercise powers; to implement and enforce laws; to exact obedience; to command; to judge . . . " Black's Law Dictionary (5th Ed.) The courts, by their very creation, are vested with the power to

impose silence, respect, and decorum, in their presence, and submission to their lawful mandates. *Anderson v. Dunn*, 19 U.S. (6 Wheat.) 204, 227, 5 L.Ed. 242 (1821); *Young v. United States ex. rel. Vuitton et Fils S.A.*, 481 U.S. 787, 107 S. Ct. 2124, 95 L.Ed.2d 740 (1987).

Finally, a reversal of the Connecticut Supreme Court decision would simply lead to more appellate review by putting into question longstanding state court principles regarding the broad discretion of the court in the conduct of its trials. *Connecticut Light & Power v. Kluczinsky*, 171 Conn. 516, 521, 370 A.2d 1306 (1976); *Antel v. Poli*, 100 Conn. 64, 69, 123 A.2d 272 (1923)

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari to review the decision of the Supreme Court of the State of Connecticut in this matter should be denied.

Respectfully submitted,

Respondent
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APPENDIX

Budlong v. Nadeau, Docket No. CV 88-354918 S, 8-13-91
Transcript, pp. 3 – 6

[T 3] THE COURT: Defense?

MR. NADEAU: James Nadeau.

THE COURT: N-A-D-E-A-U?

MR. NADEAU: Right.

THE COURT: All right.

MR. NADEAU: And Jean Crowe.

THE COURT: Spelled?

MS. CROWE: C-R-O-W-E.

THE COURT: C-R-O-W?

MS. CROWE: E.

THE COURT: Thank you.

MR. NADEAU: And Your Honor, she – I don't know how long this trial will last, and she's working. And I have another lady that has helped me write notes down. So would it be possible for her to be here too, and another day I'll either have one or the other for another trial.

THE COURT: If I understand correctly, sir, you do not hear very well, is that correct?

MR. NADEAU: You're right, Your Honor. Correct.

[T 4] THE COURT: And the purpose of the person sitting with you at counsel table is to assist you in hearing and taking notes of the proceedings for you?

MR. NADEAU: Yes, Your Honor.

THE COURT: All right. You want to be heard? Any objection to that?

MS. MURRETT: I have no objection to that, Your Honor.

THE COURT: All right.

MS. MURRETT: As long as this person that's with Mr. Nadeau is not going to be questioning any witnesses or making any comments orally.

THE COURT: Did you hear that?

MR. NADEAU: No, I didn't hear that.

THE COURT: All right. There's no objection.

MR. NADEAU: Yes.

THE COURT: Attorney Murrett expressed some concern, she said no objection as long as the person with you, in this case Ms. Crowe, is not going to be questioning the witnesses or making any comments. And obviously I assume that you don't intend to have Ms. Crowe do that.

[T 5] MR. NADEAU: Suppose I have trouble relating something? Because my understanding of reading is not perfect. Could I have her read it for me?

THE COURT: No.

MR. NADEAU: If I –

THE COURT: You may have a –

MR. NADEAU: If I had subpoenaed her as a witness –

THE COURT: Excuse me, sir.

MR. NADEAU: Okay.

THE COURT: Only one of us can talk at a time. I'm not going to be able to hear you while I'm talking to you, and you're not going to be able to hear me, even with your bad hearing, if you're talking to me while I'm trying to talk to you.

MR. NADEAU: Right.

THE COURT: So I'll try to listen to you, but I can't listen and talk at the same time. Now we have a fancy word that we call colloquy. You can talk to her in a whisper, so the jury can't hear, if you can't read part of her notes or if you want to ask her a question about what was said. You and she or her substitute, if she's not here, may communicate with each other, but noone who is not a lawyer, or in your case pro se, being your [T 6] own lawyer – which you have a constitutional right to do – can talk in a courtroom unless they're a witness. Now you started to say something about subpoenaing her as a witness. Would you say a little more about that?

MR. NADEAU: I have, Your Honor. Because she has read some of my transcript, and she has done things where – I mean, she has called the court for information and she was insulted by the court clerk

because she was threatened to be arrested because she typed papers for me, by the court clerk.

THE COURT: What's that got to do with this case?

MR. NADEAU: Well, it could be important.

THE COURT: How?

MR. NADEAU: Well, it's just that as a pro se, I haven't been able to get the right information to properly defend myself. All I want to do is prove the facts.

Budlong v. Nadeau, Docket No. CV 88-354918 S, 8-13-91 Transcript, pp. 161-162

[T 161] THE COURT: Go ahead. No, ma'am. Excuse me. Ms. Crowe, I just overheard you talk to Mr. Nadeau, and say, put that in question form.

MS. CROWE: Yes, sir, because I thought that's what you said to him.

THE COURT: That's advice. You're there to help him hear, not to be a lawyer. I will not permit that again. I will remove you from counsel table if I perceive it occurring again. Do you understand?

MS. CROWE: I understand, yes, sir.

THE COURT: Very well. Go ahead, Mr. Nadeau.

MR. NADEAU: I believe, Your Honor, you've warned me long enough – oftentime that she – rather than you do it, she thought it would be best.

[T 162] THE COURT: She has a very limited job. I'm sure she meant well, but we're going to follow the rules. Please put your question.

Budlong v. Nadeau, Docket No. CV 88-354918 S, 8-15-91
Transcript, p. 125

[T 125] THE COURT: . . . Ma'am? Ms. Crowe?

MS. CROWE: Yes, sir.

THE COURT: It's inappropriate for you to say, keep going, keep going.

MS. CROWE: I was worried about the three and a half minutes that you mentioned. I'm sorry.

THE COURT: Ma'am, you're there to help him hear, not to help him cross-examine.

Budlong v. Nadeau, Docket No. CV 88-354918 S, 8-15-91
Transcript, pp. 137-138

[T 137] THE COURT: Ms. Crowe, you will now remove yourself from counsel table and take a seat in the spectators' section. You have abused, beyond all imagination, the great leeway that I have accorded you and Mr. Nadeau.

MR. NADEAU: Your Honor, all she did – reminded me was say question, question.

MS. CROWE: I said, he said question, he said question.

MR. NADEAU: And instead of you saying it, sir – Your Honor, she –

THE COURT: I heard what she said.

MR. NADEAU: Please, I –

THE COURT: I've ruled. Take your seat in the spectator section, Ms. Crowe. Proceed, Mr. Nadeau.

MS. CROWE: Can someone take my place, Your Honor?

THE COURT: Take a seat in the spectator section Mr. (sic) Crowe. You are not an attorney. I will not have you advising a litigant in this Court. Take your seat in the spectator section. Mr. Nadeau, put a question.

[T 138] MR. NADEAU: I have asked for an alternate to write things for me.

THE COURT: Denied. Put a question.

Budlong v. Nadeau, Docket No. CV 88-354918 S, 8-16-91 Transcript, pp. 60, 141

[T 60] *Cross examination of James Nadeau by Ms. Murrett*

Q: Mr. Nadeau, can you hear me all right?

A: Yeah.

[T 141] N: I don't even know what she is asking for your honor. I don't know what she –

Ct: Sir, what is it you're saying, do you want to have someone up there to help you hear?

N: I don't know those terms that she is talking about.

Ct: I can't make her change her vocabulary, can you hear what she is saying?

N: But I don't know what the terms are.

Ct: Did you hear what she said?

N: Yes

CONSTITUTION OF THE UNITED STATES

AMENDMENT XIV.

§ 1. Citizenship rights not to be abridged by states

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.